1 2	RICHARD DOYLE, City Attorney (#88625) NORA FRIMANN, Assistant City Attorney (#93249) ROBERT FABELA, Sr. Deputy City Attorney (#148098) Office of the City Attorney 200 East Santa Clara Street		
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4	San José, California 95113-1905 Telephone Number: (408) 535-1900		
5	Facsimile Number: (408) 998-3131 E-Mail Address: cao.main@sanjoseca.gov		
6	Attorneys for CITY OF SAN JOSE		
7			
8	UNITED STATES DISTRICT COURT		
9	NORTHERN DISTRICT OF CALIFORNIA		
10	SAN JOSE DIVISION		
11			
12	JEFFREY WELCH, GLEN BISHIP,	Case Number: C08-02132 JW	
13	MITCHELL WITSINSKI, ROBERT CULBERTSON and other employees	0 4	
14	similarly situated,	STIPULATION AND [PAOPO SED] ORDER RE: SETTLEMENT OF FLSA	
15	Plaintiffs,	CLAIM	
16	V.		
17	CITY OF SAN JOSE,		
18	Defendant.		
19			
20	WHEREAS, this is a Fair Labor and Standards Act ("FLSA") case in which the		
21	Plaintiffs are asserting, based on several different theories, that Defendant City of San Jose		
22	has not paid Plaintiff firefighters overtime consistent with the FLSA for the last several years;		
23	WHEREAS, the City denies these allegations;		
24	WHEREAS, the parties agree that the further pursuit of this action would not be of		
25	benefit to either party;		
26	WHEREAS, the parties represent that they have reached a settlement in this matter,		
27	which has been approved by Plaintiffs and by the San Jose City Council in closed session,		
28	but is subject to approval of the San Jose City Council in regular session;		
	1 STIPLILATION AND IPROPOSEDI ORDER RE-SETTI EMENT OF ELSA CLAIM C07-06424 I		

WHEREAS, through this stipulation, the parties seek an order from the Court approving the tentative settlement reached by the parties, so that the parties may finalize the settlement and file a stipulated judgment.

THEREFORE, the parties, through their respective counsel, stipulate as follows:

- (1) The proposed settlement agreement reached by the parties in this matter is fair and reasonable and will consist in substantial part of the following: (a) Plaintiffs will recover from the Defendant City of San Jose back wages in an amount to be to be determined by recalculating the Plaintiffs' payroll back to the pay that includes April 24, 2006 through the time that settlement payment is made; (b) such recalculations and settlement payments shall be calculated consistent with the proposed settlement agreement, attached hereto as Exhibit A; (c) beginning the first pay period that commences after July 1, 2010, the City will calculate overtime pay pursuant to the attached proposed settlement agreement; and (d) the City will pay Plaintiffs' attorneys' fees and costs for both this matter as well as the related case of *Juan Diaz, Keith Keesling, Chrstopher Murphy, Gary Weekley, Karen Allyn, and other employees similarly situated v. City of San Jose,* case number C07-06424 JW, in a total amount of one hundred five thousand dollars (\$105,000) for both cases.
- (2) Upon approval by the San Jose City Council of this settlement at a regular session of the San Jose City Council, the parties shall submit for signature a stipulated judgment incorporating the terms of this Order as well as an executed settlement agreement.
- (3) Any judgment amount or other consideration herein ordered shall never at any time or for any purpose be considered an admission of liability or responsibility on the part of any of the parties herein and that the plaintiffs waive all rights, if any be had, to further liquidated damages.

Dated: May 13, 2010 RICHARD DOYLE, City Attorney

By: /S/ ROBERT FABELA Sr. Deputy City Attorney

Attorney for Defendant CITY OF SAN JOSE

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1	Dated: May 13, 2010 WYL	IE, McBRIDE, PLATTEN & RENNER	
2		10.1	
3	By: _	/S/ CAROL L. KOENIG	
4	Attor GLEI	neys for Plaintiffs JEFFREY WELCH, N BISHIP, MITCHELL WITSINSKI, ERT CULBERTSON and other	
5	empl	ERT CULBERTSON and other oyees similarly situated	
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7 8			
9			
10	ATTESTMENT OF CONCURRENCE PER GENERAL ORDER 45 FOR FILING:		
11	I attest that concurrence in the filing of this document by the signatories, Robert		
'	Fabela and Carol Koenig, has been obtained, and that a record of the concurrence shall be		
13	maintained at the Office of the City Attorney.		
14		Robert Fabela	
		ROBERT FABELA	
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16 17			
' <i>'</i> 18			
19		ce is vacated	
20		1	
21		and has	
22	7	JAMES WARE	
23	U k ∕ii⊤	ED STATES DISTRICT JUDGE	
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